

Remarks

35 U.S.C. 103(a) Rejections of Claims 1, 2, 4, 7-8, 13-14, 17-18 and 37. With respect to the Examiner's rejections of the referenced claims as being unpatentable over Gago (US 4,470,839), the Applicant has canceled Claims 1, 2, 4, 7-8, 13-14, 17-18 and 37 herein and reserves the right to file a Continuation in Part to further prosecute the subject matter of the present invention.

35 U.S.C. 103(a) Rejections of Claims 5, 11-12 and 15-16. With respect to the Examiner's rejection of the referenced claims as being unpatentable over Gago, as applied to the claims above, further in view of Felix (US 5,725,885), the Applicant has canceled Claims 5, 11-12 and 15-16 herein and reserves the right to file a Continuation in Part to further prosecute the subject matter of the present invention.

35 U.S.C. 103(a) Rejections of Claims 6 and 9-10. With respect to the Examiner's rejection of the referenced claims as being unpatentable over Gago in view of Felix, as applied to the claims above, further in view of Fusey (US 3,796,637), the Applicant has canceled Claims 6 and 9-10 herein and reserves the right to file a Continuation in Part to further prosecute the subject matter of the present invention.

New Claims 48 - 61. The Applicant presents herein new Claims 48 - 61 that have prior basis in the original specification and examples of the present application.

For reference in the Examiner's consideration of the new claims, the Applicant notes the Examiner's allowance of Claims 21-34 and 38, which represent a range of embodiments of the present invention that are consistent with the specific disclosures concerning the formulation and benefits of the inventor's "1 Series" prototype composition described in the Applicant's Examples 1 and 2 and the "4 Series" composition described in the Applicant's Example 3. New Claims 48 - 61 are constructed with similar limitations as the previously allowed Claims 21-34 and 38 and are similarly consistent with specific disclosures in the specification of the original application filed 27 November 2000 concerning the formulation and benefits of the inventor's "5 Series" prototype composition as described in the Applicant's "Example 3."

As per the Applicant's prior disclosures and arguments presented in the specification of the original application, prior Amendments A, B, and C, and the Applicant's "Rule 132" Declaration (filed on 24 September 2003 pursuant to 37 CFR Section 1.132), the embodiments of the present invention that are consistent with the Applicant's "5 Series" composition have had the unexpected result of providing the best long-term oxygen release characteristics. Although similar in most other respects to the embodiment of the "4 Series" composition, the "5 Series" embodiment of the composition omitted the disintegrant ingredient which subsequently provided better results that were unexpected; this is the basis for new independent claim 48. Notwithstanding the Applicant's numerous previous disclosures and arguments concerning the "5 Series" embodiment of the composition, one example of the unexpected results that demonstrates non-obviousness is how the long-term integrity of large granular particles of the "5 Series" composition without a disintegrant added provided for superior oxygen-release to smaller fragments or particles achieved with the inclusion of a disintegrant consistent with other embodiments disclosed by the inventor. It has been well-accepted wisdom in the art and practice of the field of the invention that smaller particles of an oxygen-release composition *should* provide for superior oxygen-release characteristics relative to larger particles on the presumption that the smaller particles have a higher surface area to volume ratio and hence provide a higher total surface area available for oxygen release. However, only through empirical testing did the Applicant determine that the comparatively larger particles of the "5 Series" composition provided oxygen-release characteristics that outperformed the smaller particles of the other disclosed embodiments of the composition. Proceeding contrary to accepted wisdom in the art is considered implicit evidence of non-obviousness (*In re Hedges*, 783 F.2d 1038, 228 USPQ 685 [Fed. Cir. 1986]).

In dependent claims 54 and 55 the Applicant also claims embodiments of the disintegrant-free "base" composition of new independent claim 48 that may include one or more organic (claim 54) or inorganic (claim 55) disintegrants. These claims are not redundant of the previously allowed claims, as the independent composition of claim 21 always contains at least one disintegrant, pre-gelled starch, such that any other disintegrants provided for by dependent claims 27 - 29 are in addition to the "base" composition of claim 21 that includes pre-gelled starch as a disintegrant.

Based on the foregoing and the Examiner's prior allowance of Claims 21-34 and 38, the Applicant believes the subject matter, form and limitations of the embodiments of the present invention as set forth in new Claims 48 - 61 herein are also in full condition for allowance.

Conditional Request for Constructive Assistance

It is the Applicant's belief that this Amendment provides a complete response to the Examiner's Office Action mailed 6 July 2004. The Applicant also submits that the pending claims as set forth herein define the subject matter of the present invention in a manner that is proper, definite and distinguishable over the prior art. If, for any reason, this response is not deemed complete or this application is not believed to be in full condition for allowance, the Applicant respectfully requests the constructive assistance and suggestions of the Examiner pursuant to MPEP § 2173.02 and § 707.07(j) in order that the undersigned can place this application in allowable condition as soon as possible and without the need for further proceedings.

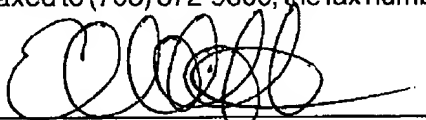
Very respectfully,



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Certificate of Facsimile: I certify that on the date below, this document and referenced attachments, if any, have been faxed to (703) 872-9306, the fax number provided by the Examiner.



6 January 2005

Eric Christian Hince, Applicant